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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,499	09/12/2003	Jong Seob Lee	20020-02USA	5678
7590	11/22/2005		EXAMINER	
JHK Law P.O. Box 1078 La Canada, CA 91012-1078			PAGE, BRENT T	
		ART UNIT	PAPER NUMBER	
			1638	
DATE MAILED: 11/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/660,499	LEE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brent Page	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 April 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-16 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to a polynucleotide, a recombinant vector comprising said polynucleotide, a cell comprising said polynucleotide, a plant comprising said polynucleotide, plant tissue or seed derived from said plant and a method for enhancing root growth of a plant, classified in class 800, subclass 278, for example.
- II. Claims 14 and 15, drawn to a method for identifying a compound affecting the activity or expression of a polynucleotide, classified in class 435, subclass 69.2, for example.
- III. Claim 16, drawn to a polynucleotide encoding a polypeptide that binds to the nucleic acid sequence of SEQ ID NO: 1, classified in class 536, subclass 23.5, for example.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different

product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case Invention I, the nucleotide sequence, may be used in materially different processes other than the process described by Invention II. The polynucleotide sequence of invention I may be used in a process to improve root growth in plants by transformation of a vector construct comprising said sequence into a plant cell host as disclosed in this patent application. Furthermore, the polynucleotide sequence of Invention I could also be used for the in vitro synthesis of protein by way of an expression vector in a variety of hosts for said expression vector. Therefore, the product as claimed can be used in a materially different process than the process described in Invention II. Inventions I and II are thereby distinct and restriction is proper.

Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different Inventions I and III are not disclosed as capable of use together. Furthermore Inventions I and III have different functions and different effects. Invention I is an isolated polynucleotide sequence that encodes a polypeptide the expression of which stimulates root growth. Invention III is an isolated polynucleotide that encodes a polypeptide, which hybridizes to the nucleic acid of SEQ ID NO: 1. The functions of Groups I and III are different in that the two nucleotide sequences are chemically different and encode structurally and functionally different and distinct polypeptides. The DNA-binding protein-encoding nucleic acid of Group III is not

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required by Group I. The plant transformation and regeneration methods of Group I are not required by Group III. Therefore, Inventions I and III have different functions and different effects and are thereby unrelated and restriction is proper.

Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of being used together and further, have different modes of operation, different functions and different effects. Invention II discloses a method for identifying a compound that affects the activity of expression of a polynucleotide that encodes the amino acid sequence of SEQ ID NO: 2. Invention III is a polynucleotide that is not disclosed as being either a product or being used by the method of Group II. The additional "candidate material" and expression/activity assay methods of Group II are not required by Group III. Therefore Inventions II and III are unrelated and restriction is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their divergent subject matter, fields of search, and different classification, restriction for examination purposes as indicated is proper.

A telephone call was made to JHK Law on 11/10/05 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent Page whose telephone number is (514)-272-5914. The examiner can normally be reached on 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571)-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Brent T Page

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP 1638

